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Respondent contends that this matter must be dismissed because it has obtained an order of discharge in bankruptcy and because it no longer conducts any business. Pro se Complainant argues that this case should not be dismissed since she

should not have been terminated and since she incurred damages arising out of her unlawful termination.

### **Findings of Fact**

Based upon the record in this matter, I make the following findings of fact:

1. On July 31, 1999, Complainant filed a Charge of Discrimination alleging a sex discrimination claim under the Illinois Human Rights Act (775 ILCS 5/2-102(A)).

2. On February 9, 2000, the Department of Human Rights issued a Notice of Default against Respondent pursuant to Section 7A-102(C)(4) of the Human Rights Act (775 ILCS 5/7A-102(C)(4)) due to Respondent's failure to attend a fact-finding conference. Respondent thereafter filed a timely Request for Review asserting, among other things, that the Department lacked subject-matter jurisdiction over Respondent since Respondent employed fewer than 15 employees.

3. On August 31, 2000, the Department entered an Order sustaining the default against Respondent and refused to consider Respondent's allegations of lack of subject-matter jurisdiction in the absence of Respondent's explanation as to why it had failed to present its evidence supporting its claim of lack of subject-matter jurisdiction at an earlier time.

4. On October 11, 2000, the Commission entered an order holding Respondent in default and eventually set the matter for a May 17, 2001 damages hearing.

5. On April 25, 2001, the Commission received a copy of a Chapter 7 bankruptcy petition filed by Respondent. The damages hearing was thereafter stayed pending disposition of the bankruptcy petition.

6. On December 17, 2001, Respondent filed a status report indicating that it had been discharged of all of its dischargeable debts. The status report, however, did

not specifically assert that Complainant's Human Rights Act claim was covered by the discharge order.

7. On March 7, 2002, Respondent filed a status report and motion to dismiss alleging that: (1) there were no assets in the estate for liquidation for the benefit of creditors, and that Complainant was named as an unsecured creditor on Schedule F; (2) Complainant was named as an unsecured creditor of Respondent's bankruptcy estate; and (3) Respondent had ceased business and had been administratively dissolved by the State of Illinois.

8. On May 21, 2002, an Order was entered which required Complainant to file an intention to proceed with this matter given the fact that Respondent had undergone bankruptcy and was no longer in business.

9. On May 31, 2002, Complainant filed a response to the May 21, 2002 Order, indicating that she still wished to continue with the Complaint against Respondent, that she should not have been terminated, and that she sustained damages caused by Respondent's conduct towards her.

#### **Conclusions of Law**

1. A prior Order of the Bankruptcy Court discharging Respondent from its debts that includes a Human Rights Act claim by a complainant precludes that complainant from seeking a subsequent monetary recovery from the Commission.

2. Issuance of an order requiring a respondent which has stopped conducting any business to cease and desist from future unlawful discrimination has no legal purpose.

#### **Determination**

The Commission should issue a finding of liability against Respondent for its failure to appear at the fact-finding conference prior to filing its Bankruptcy petition, but

should award no other relief since Complainant's Human Rights Act claim was discharged in Bankruptcy proceedings and Respondent has ceased doing business.

### **Discussion**

Respondent has filed a motion to dismiss this case arguing that it is essentially judgment proof, with the Bankruptcy Court having discharged its debts and closed the bankruptcy estate, and that Complainant cannot obtain any other relief because it is no longer doing any business. Complainant on the other hand wishes to continue her case against Respondent because she has sustained damages as a result of Respondent's conduct towards her. However, due to the existence of a Bankruptcy Court Order discharging, among other things, Respondent's debt against Complainant, the only question remains as to whether Complainant is entitled to any sort of relief other than a default order on the issue of liability. After reviewing the pleadings and Commission precedent, I agree with Respondent that Complainant is entitled to no other relief other than a default order on the issue of liability.

According to Respondent, it filed a Chapter 7 bankruptcy petition on April 23, 2001 that listed Complainant as one of its unsecured creditors on Schedule F of the petition. Under **Brownlee and Pulaski Alexander Mental Health Association**, \_\_\_ Ill. HRC Rep. \_\_\_ (1991SN0322, September 13, 1993), once a respondent files a bankruptcy petition, the Commission is no longer able to help a complainant pursue reimbursement for losses suffered as a result of a violation of the Human Rights Act. Under such a circumstance, a complainant must either have the bankruptcy court determine the amount of damages or obtain a waiver of the automatic stay provisions from the Bankruptcy Court. (**Brownlee**, Slip op. at p. 2.) Here, the record does not indicate that Complainant ever sought to a lift of the automatic stay of proceedings in Bankruptcy Court, and Respondent reports that the Bankruptcy Court has discharged Respondent of all of its dischargeable debts and closed its bankruptcy estate. Thus,

where Complainant has not contended that her discrimination claim survived the Bankruptcy Court Order closing Respondent's bankruptcy estate, Complainant cannot revive her otherwise discharged claim and proceed to a damages hearing before the Commission.

However, as the Commission in **Brownlee** observed, discrimination claims under the Human Rights Act have a "police power" aspect that focuses on the state's interest in regulating discriminatory employers. Indeed, the Commission has sustained default orders against respondents undergoing bankruptcy petitions and issued cease and desist orders that did not generate a financial consequence to the respondents. The Commission, though, in **Miller and Brook Fashions, Inc.**, \_\_\_ Ill. HRC Rep. \_\_\_ (1990CF2842, October 30, 1995) refused to enter a cease and desist order against a respondent who had gone through bankruptcy court proceedings and had otherwise ceased to exist as a viable entity after concluding that the issuance of a cease and desist order would have been an exercise in futility. Here, Complainant has not set forth any reason why this case should proceed where her claim has been discharged in Bankruptcy Court, and where Respondent has ceased to exist as an entity. Accordingly, I will recommend that the Commission sustain the issuance of a default order on the issue of liability since that order had been entered prior to Respondent undergoing bankruptcy proceedings, but deny Complainant any other sort of relief due to the existence of a Bankruptcy Court discharge order and the fact that Respondent is no longer conducting business.

### **Recommendation**

For all of the above reasons, it is recommended that:

1. Respondent be held in default on the issue of liability in this sex discrimination claim due to its failure to participate in the fact-finding conference; and

2. Complainant receive no other relief arising out of her claim of sex discrimination.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 16<sup>h</sup> DAY OF JULY, 2002.